

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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(240) 777-6600

**Case No. A-6538**

**PETITION OF JOHN D. BRANDON**

OPINION OF THE BOARD

(Hearing Held: November 1, 2017)

(Effective Date of Opinion: November 9, 2017)

Case No. A-6538 is an application by Petitioner John D. Brandon for four variances from the requirements in Section 59-4.4.4.B.2 of the Montgomery County Zoning Ordinance, necessary for the construction of a detached garage and an addition to an existing home and porch. Specifically, the Petitioner requests the following:

(1) a variance of fifty-five (55) feet for the proposed construction of an accessory structure (detached garage) located within twenty-five (25) feet of the front lot line. The required setback is eighty (80) feet, in accordance with Section 59-4.4.4.B.2 of the Zoning Ordinance;

(2) a variance to permit the proposed construction of an accessory structure (detached garage) in a location forward of the rear building line. Section 59-4.4.4.B.2.c of the Zoning Ordinance requires that accessory structures be located in the rear yard only;

(3) a variance of thirty-two (32) feet for the proposed construction of an addition to an existing home and porch that is within eighteen (18) feet of the front lot line. The required setback is fifty (50) feet, in accordance with Section 59-4.4.4.B.2 of the Zoning Ordinance; and

(4) a variance of thirty-five (35) feet for the proposed construction of an addition to an existing home and porch that is within zero (0) feet of the rear lot line. The required setback is thirty-five (35) feet, in accordance with Section 59-4.4.4.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, November 1, 2017. Petitioner John D. Brandon appeared pro se and testified in support of his application.

Decision of the Board: Variances GRANTED.

### **EVIDENCE PRESENTED**

1. The subject property is Parcel P456, Darnestown Richland Subdivision, located at 14528 Turkey Foot Road, MD, 20878, in the RE-2 Zone.

2. The subject property is 1.17 acres in size, less than the two-acre minimum for the RE-2 Zone. It is an extremely shallow, highly irregularly shaped lot with eight sides, resembling a shallow bell curve. See Exhibits 4(a)-(d). Turkey Foot Road runs inside of the top of the "bell" portion of this property, such that the road actually occupies more than 18,000 square feet of the subject property and effectively removes a 39-foot wide swath from the property. The "bell" portion of the property rests on the property's rear lot line, which generally extends from the northwest corner of the property to the southeast; the "bell" extends outward in a northeast direction from that lot line. The Petitioner is not responsible for the unusual shape of the property. See Exhibit 3.

3. Per the Justification Statement, the topography of the property is such that the house sits on a plateau, and the property drops about 12 feet down to Turkey Foot Road. The property also falls off dramatically east of the existing house, down to a stream. The Petitioner notes in the Justification Statement that:

The placement of the house, above the road, on a plateau, atop a ravine/cliff that is covered in brush serves to reduce traffic noise, prevent foot traffic, protect the house from cars running off the road, secure the house from trash, and to hide it somewhat behind [a] large old Red Maple. And Juniper tree. From the perspective of a driver: the house, being elevated compared to the road and bordered by a hedge of bushes is removed and not distracting. In addition, pedestrians, pets, toys, debris have no easy escape to the street level and are not easily seen or too distracting to anyone below. And that cliff serves to recess the house from the street.

The severity of the topography is illustrated in the photographs and topographical map attached to the Justification Statement. See Exhibit 3.

4. The Petitioner purchased the property in 2012. Per the Justification Statement, the existing house was built sometime between 1912 and 1921. The rear of the house is located on the rear lot line. At the location of the house, the property is roughly 71 feet deep from the rear lot line to the front lot line. The existing house and porch are setback approximately 57 feet from the front lot line, but because Turkey Foot Road traverses this

property, they are located only 18 feet from the road. The Petitioner is not responsible for the location of the existing house on the subject property. See Exhibit 3.

5. Per the Justification Statement, the existing home is uninhabitable and will remain as such until it is renovated to meet code; any building constructed to replace it would need the same two variances the existing house needs. Petitioner further states in his Justification Statement that:

Until the variances are obtained and building permits granted, then, the existing house will continue to exist as a liability to the owner. If not rebuilt, the house will continue to degrade and be an eye sore to the community and continue as a financial liability both by its property tax and its insurance costs; meaning, the property is taxed and needs to be insured as though it is a valued improvement on a buildable parcel, neither of which would be the case, if the variances are denied.

See Exhibit 3. He further argues with respect to the variances sought for the detached garage that the covered parking is needed because parking in the open on this property is hazardous in windy or snowy conditions due to falling debris from the old trees (dead/weak branches, twigs, acorns).

6. The subject property abuts a 6.7 undeveloped parcel owned by the Pond Ridge Homeowners Association to the north. Property owned by the Maryland National Capital Park and Planning Commission abuts the southeast portion of the subject property, and two other properties owned by the Petitioner, at 14530 and 14534 Turkey Foot Road, abut the southwestern portion of the subject property. The Justification Statement indicates that the property is surrounded by old growth forest and that large oak trees overhang the property. See Exhibit 3.

7. At the hearing, the Petitioner testified as to the unusual nature of his property, including its exceedingly shallow shape, its extreme topography, and the fact that Turkey Foot Road occupies a significant portion of the property. He testified that the parcel across Turkey Foot Road from the existing house is owned by the Pond Ridge Homeowners Association, and is not developed. He testified that to the east and south, the property is bordered by parkland, and that he owns the two abutting parcels on the south side of the property. He testified that the property is in a forest. With respect to topography, he testified that when exiting the house, one can walk about 18 feet, and then the property falls off straight down to the road. He highlighted pictures attached to his Justification Statement which illustrate the severity of this slope. See Exhibit 3.

The Petitioner testified that the width of the lot does not allow him to meet the front setbacks, and that the rear of the existing house sits on the rear lot line. He testified that the property has no buildable envelope. The Petitioner testified that he plans to enclose the existing wrap-around porch, and proposes to add four feet to the southeast side of

the house in order to accommodate a stairway, but that his planned construction would not bring the footprint of the existing house any closer to Turkey Foot Road than it already is. The Petitioner testified that the property does not have a garage at present, and that he cannot locate a garage behind the rear building line because the existing house sits on that line. Finally, he testified that without the grant of the requested variances, he will not be able to rehabilitate or improve the property.

## FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and the evidence of record, the Board finds that the requested variances can be granted. The variances comply with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59.7.3.2.E.2.a.i -- exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds that at 1.17 acres, the subject property is significantly substandard in size for the RE-2 Zone in which it is located (2 acres minimum), a factor compounded by the fact that Turkey Foot Road occupies approximately 18,000 square feet of the subject property, rendering that portion unusable. The Board further finds that the property has a unique long and very shallow shape, and is burdened with severely sloping topography, as described above and evidenced in the photographs submitted by the Petitioner and by the topographic lines on Exhibit D to the Justification Statement (Exhibit 3). Finally, the Board notes that the Petitioner has testified that the application of the required setbacks to this property does not leave him a buildable envelope, and that without the grant of the requested variances, he cannot rehabilitate or improve the house that has been located on this property for over 100 years. The Board finds that this combination of factors constitutes an extraordinary condition peculiar to the subject property.

*Section 59-7.3.2.E.2.a.ii. – the proposed development uses an existing legal nonconforming property or structure;*

The Board finds that the existing house which the Petitioner is seeking to improve was constructed sometime between 1912 and 1921, which is before the enactment of the first Zoning Ordinance in Montgomery County. Thus the Board finds that the proposed development uses an existing legal nonconforming property or structure.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioner purchased this property in 2012, and is not responsible for the size, shape, topography or layout of the subject property. There is no evidence in the record to suggest that the Petitioner created the special circumstances pertaining to the property.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the extraordinary nature of this property, including its size and topography, but particularly its exceedingly narrow and unusual shape, serves to eliminate any practical buildable envelope when the setbacks required by the Zoning Ordinance are applied, and thus poses a practical difficulty to the Petitioner by precluding his ability to rehabilitate or improve the property without variance relief. The Board notes that the requested variances will allow the Petitioner to rehabilitate the existing house which has stood on this property for over 100 years, and will not bring that house any closer to the road than it already is. The variances will also allow the construction of a one-story, two-car garage which would not otherwise be allowable on this property because of its shallow nature and because the existing house is situated on the rear lot line. Thus the Board finds that the requested variances are the minimum necessary to relieve the practical difficulties that would otherwise be imposed by the Zoning Ordinance on the Petitioner, and to allow the proposed rehabilitation and modest improvements to the property.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the proposed rehabilitation/addition and detached garage are consistent with the residential uses contemplated for the area by the Potomac Subregion Master Plan (2002).

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds, per the Justification Statement, the photographs attached to that Statement, and the testimony of the Petitioner that the subject property abuts a 6.7 undeveloped parcel owned by the Pond Ridge Homeowners Association to the north, parkland owned by the Maryland National Capital Park and Planning Commission to the southeast, and two other properties that the Petitioner owns to the southwest. The Board further finds that the developed portion of the subject property sits on a plateau above the road, and is somewhat shielded from view by the elevation and vegetation. Finally, the Board finds that without the grant of these variances, the existing house cannot be rehabilitated and will continue to deteriorate, creating what the Petitioner termed an eyesore to the community. Thus the Board finds that the grant of the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties.

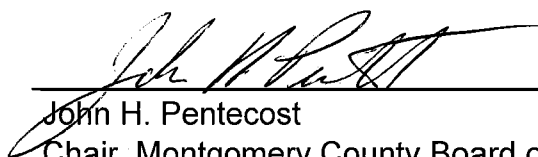
Accordingly, the requested variances for an addition to an existing home and porch, and for a detached accessory structure, are **granted**, subject to the following conditions:

1. Petitioner shall be bound by his testimony and exhibits of record, to the extent that such testimony and evidence are relied on in this opinion; and

2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Edwin S. Rosado, Vice Chair, with Stanley B. Boyd, Bruce Goldensohn, and Katherine Freeman in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 9th day of November, 2017.

  
\_\_\_\_\_  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.